



GAO

Accountability \* Integrity \* Reliability

United States General Accounting Office  
Washington, DC 20548

---

May 25, 2004

The Honorable Richard G. Lugar  
Chairman  
The Honorable Joseph R. Biden, Jr.  
Ranking Member  
Committee on Foreign Relations  
United States Senate

The Honorable Henry J. Hyde  
Chairman  
The Honorable Tom Lantos  
Ranking Member  
Committee on International Relations  
House of Representatives

Subject: *Iraq's Transitional Law*

On June 30, 2004, the Coalition Provisional Authority (CPA) intends to transfer power in Iraq to a fully sovereign Iraqi interim government.<sup>1</sup> CPA and the Iraq Governing Council took a fundamental step toward this goal in March 2004, when they signed the *Law of Administration for the State of Iraq for the Transitional Period* (hereafter referred to as the transitional law). The transitional law is intended to govern the affairs of Iraq until Iraqis approve a permanent constitution and a permanent Iraqi government takes office.<sup>2</sup>

GAO has ongoing and completed work reviewing various aspects of the U.S. effort to reconstruct Iraq. Our ongoing work includes reviewing the costs associated with reconstruction; the process used to award reconstruction contracts; efforts to develop Iraq's security forces; the rebuilding of Iraq's oil, electricity, and water infrastructure; and programs to help Iraq develop a unified, democratic government. For this report, we describe the following information as it exists at this time: (1) the time frames and Iraqi governmental structures established by the transitional law; (2) arrangements in the law for the U.S.-led multinational force, Iraqi security forces, and militias; and (3) mechanisms in the law for resolving disputes over property and territories within Iraq. In each of these areas, we also explain the transitional law's

---

<sup>1</sup>The Coalition Provisional Authority (CPA) is the U.N.-recognized coalition authority, led by the United States and the United Kingdom, responsible for the temporary governance of Iraq.

<sup>2</sup>The transitional law states that on June 30 a "fully sovereign Iraqi Interim Government" will take power. However, the law does not further elaborate the structure or authority of the interim government.

Report Documentation Page			Form Approved OMB No. 0704-0188		
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>2004</b>	2. REPORT TYPE		3. DATES COVERED <b>00-00-2004 to 00-00-2004</b>		
4. TITLE AND SUBTITLE <b>Iraq's Transitional Law</b>			5a. CONTRACT NUMBER		
			5b. GRANT NUMBER		
			5c. PROGRAM ELEMENT NUMBER		
6. AUTHOR(S)			5d. PROJECT NUMBER		
			5e. TASK NUMBER		
			5f. WORK UNIT NUMBER		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>United States General Accounting Office, Washington, DC, 20548</b>			8. PERFORMING ORGANIZATION REPORT NUMBER		
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)			10. SPONSOR/MONITOR'S ACRONYM(S)		
			11. SPONSOR/MONITOR'S REPORT NUMBER(S)		
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>17</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

references to other Iraqi laws and legal provisions that help implement the transitional law. Where legal provisions to address these issues have not been completed, we describe the progress toward their completion or other actions to address the issues. We recognize that the situation is fluid and that there are ongoing efforts to address unresolved issues.

To address these objectives, we examined the transitional law and related CPA regulations, orders, and memoranda, as well as assessments of Iraqi institutions prepared by the Department of Justice and nongovernmental organizations. We met with officials from the Departments of State (State), Defense (DOD), and Justice, and CPA to clarify provisions of the transitional law. We also discussed with these officials progress toward completing provisions referred to in the transitional law, such as the annex and electoral laws. We conducted our review from March to May 2004 in accordance with generally accepted government auditing standards.

## Overview

Iraq's transitional law divides the transitional period into two phases<sup>3</sup>—the interim government phase, which begins June 30, 2004, and the transitional government phase, which begins after elections for a National Assembly are held and the transitional government is formed. The law does not specify how the interim government is to be formed or structured, but provides that the interim government will govern in accordance with an annex to be developed. Since April 2004, the United Nations has been playing a key role in helping form and structure the interim government. Elections for the National Assembly are to be held no later than January 31, 2005, under an election law that, according to CPA officials, they aim to complete before the transfer of power. For the transitional government phase, the transitional law details the government's structure and responsibilities, including procedures for developing a permanent constitution and the federal structure. The National Assembly will draft a permanent constitution for the Iraqi people's approval in a general referendum. However, if a majority of Iraqi voters or if two-thirds of the voters in 3 of Iraq's 18 governorates reject the constitution, elections for a new National Assembly will be held and the process of drafting a permanent constitution begins again. To prevent the concentration of power in the federal government, the transitional law encourages local authority during the transitional period. The transitional law recognizes the Kurdistan Regional Government and specifies that it controls the police forces and internal security in the Kurdistan region.

The transitional law includes some provisions under which Iraqi security forces and the multinational force will provide security in Iraq after the transfer of power. Officials from DOD and State are examining what additional provisions, if any, may be necessary to further define the role of the multinational force after June 30, including a new U.N. Security Council resolution or revisions to existing CPA orders. The transitional law also outlines elements of the command and control structure for

---

<sup>3</sup>Under the transitional law, the transitional period covers the interim government phase and the transitional government period. The interim government phase begins June 30, 2004, and the transitional government phase ends with the formation of an elected Iraqi government under a permanent constitution.

some Iraqi security forces and outlaws all militias not under the command structure of the transitional government, except where provided by federal law. According to State and DOD officials, CPA is currently considering how it could further elaborate on provisions for both of these areas.

The transitional law includes provisions for the transitional government to implement that are related to resolving disputes over property rights and territory. These disputes resulted from the previous regime's practices in altering the demographic character and boundaries of certain regions and territories, including Kirkuk. One provision calls for compensating residents who were deported, expelled, or who emigrated, by restoring their homes and property to them, or, where this is infeasible, providing just compensation within a reasonable time. Another provision establishes a process Iraqis will use to resolve the status of disputed territories. If Iraqis cannot resolve the status of disputed territories through the prescribed processes, they would request assistance from the United Nations.

The transitional law provides a road map for establishing a permanent, unified, and democratic government in Iraq. Nonetheless, some issues related to the transfer of power remain unresolved. For example, the transitional law does not specify how the interim government is to be structured, nor does it fully clarify the authority of a multinational force in Iraq after the transition of power. U.S. officials and others are working to resolve these and other issues before June 30, to ensure that the transfer of authority can proceed as planned. These issues are discussed in our summary.

The Departments of State and Justice declined to provide comments on a draft of this correspondence. The Department of Defense and the Coalition Provisional Authority did not provide official comments, but sent us technical comments, which we incorporated as appropriate.

## **Background**

On November 15, 2003, the Iraq Governing Council and CPA signed an agreement on the steps needed to transfer power to an Iraqi transitional administration. The Iraq Governing Council completed a key step in this process by drafting the transitional law in consultation with CPA and signing it on March 8, 2004. The transitional law states that it is the supreme law of the land and that it is binding in all parts of Iraq during the transitional period. It contains 62 articles that (1) protect or guarantee fundamental rights for all Iraqis, including the right of free expression, peaceable assembly, religion, and a fair and public hearing by an impartial tribunal and (2) outline the structure and authority of Iraq's transitional government, including its federal structure and legislative, executive, and judicial branches.

The transitional law also states that it cannot be amended except by the approval of Iraq's transitional presidency council and a three-fourths majority of the National Assembly. Similarly, all laws in place in Iraq before June 30, 2004, will remain in force until amended or rescinded by the transitional government. Similarly, CPA laws, regulations, orders, and directives shall remain in force until amended or rescinded by duly enacted legislation. The law also makes Islam the official religion of Iraq and states that Islam is a source of legislation. The law clarifies this by stating that no law that contradicts the universally agreed tenets of Islam, the principles of

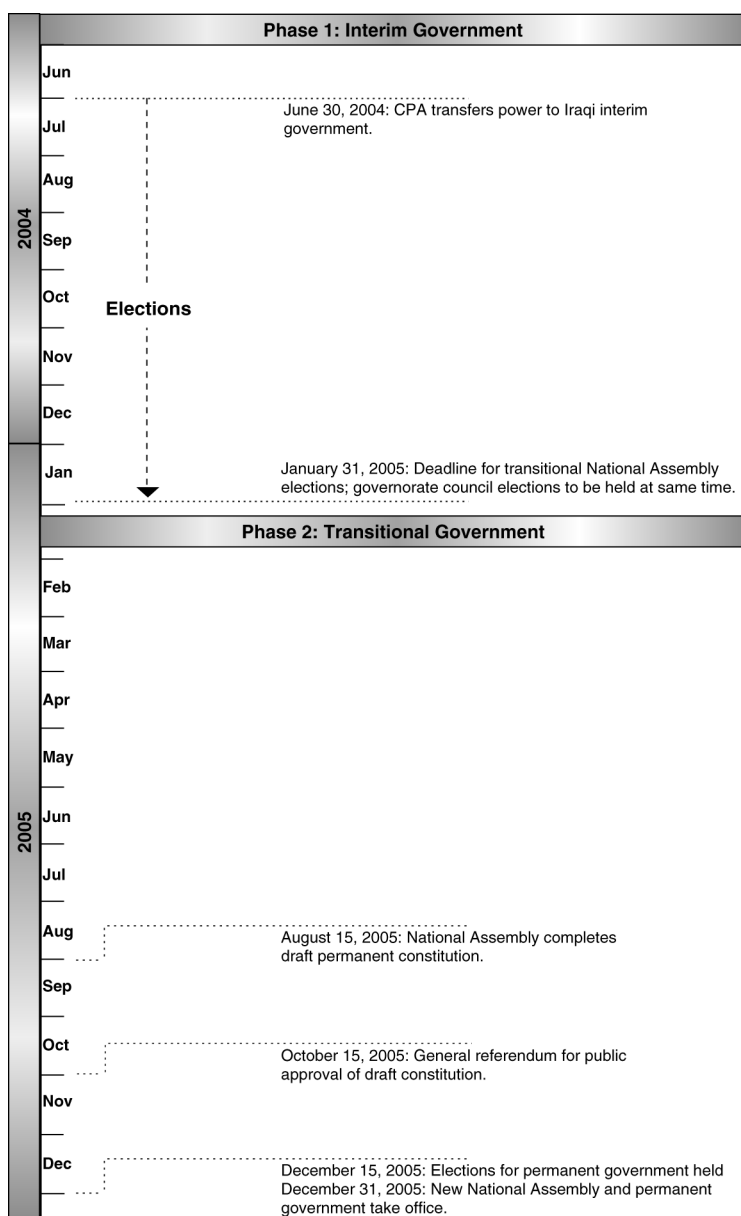
democracy, or other rights may be enacted. Moreover, it guarantees to all individuals full freedom of religious belief and practice.

To support governance and security issues related to implementing the transitional law, the United States had obligated about \$1.7 billion as of April 2004. This includes \$244 million for the Iraqi police and security forces; \$378 million for rule of law and democracy building, including the interim and transitional governments; and \$1.08 billion for CPA and U.S. agencies' operating expenses in Iraq.

### **Time Frames and Establishment of an Iraqi Government during the Transitional Period**

The transitional law divides the transitional period into two phases. The first phase begins June 30, 2004, when a fully sovereign interim government assumes power. The transitional law does not detail how the interim government is to be formed or how it will be structured, but refers to an annex to be developed before June 30, 2004. As of May 2004, the United Nations was playing a key role in helping form this interim government. During the interim government phase, elections for a National Assembly are to be held no later than January 31, 2005. The second phase begins after the Iraqi people elect the National Assembly and the transitional government is formed. The transitional government will then draft a permanent constitution for the Iraqi people's consideration. The second phase will end once the Iraqi people approve a permanent constitution and elect a permanent government. Figure 1 shows the key dates for the two phases.

**Figure 1: Time Line of Major Events for Interim and Transitional Governments**



Source: GAO analysis of the Law of Administration of Iraq for the Transitional Period, March 8, 2004.

## Interim Government during First Phase

The transitional law states that a fully sovereign interim government will assume power in Iraq on June 30, 2004, and that the interim government will be formed through consultations with Iraqis and possibly in consultation with the United Nations. The transitional law does not specify the exact process for forming the interim government, nor does it define its structure or authority. It provides that the interim government will govern Iraq in accordance with the transitional law and the forthcoming annex to the transitional law to be issued before June 30. Since April 2004, the United Nations has also been playing a key role in helping form the interim government. The U.N. Special Adviser on Iraq proposed that the interim government be a caretaker with the sole purpose of tending to the day-to-day administration of

the country.<sup>4</sup> The special adviser further proposed that a prime minister lead the interim government and that a president serve as head of state, with two vice presidents. He stated that, by the end of May 2004, it would be possible to identify leaders respected by and acceptable to Iraqis across the country to form this government.

One key function of the interim government is to prepare Iraq for conducting elections for a National Assembly that will then form a transitional government. The transitional law provides that the National Assembly elections will be held in accordance with an electoral law and a political parties law. These laws do not currently exist and CPA officials are drafting CPA orders to address these issues, according to U.S. officials. According to the transitional law, two goals of the electoral law are to have women constitute one-fourth of the members of the National Assembly and to achieve fair representation for all communities in Iraq. The transitional law does not specify any other provisions to be included in the electoral or political parties laws. The U.N. Special Adviser recommended that the leaders of a caretaker government should not be candidates for the National Assembly.

The U.N. Special Adviser also proposed that during the interim government phase, a national conference be held of at least 1,000 Iraqis representing all political parties, tribal leaders, universities, women's groups, religious leaders, and others. The national conference would contribute ideas on how to address the security situation, elections, and aspects of the transitional law. According to the U.N. Special Adviser, a consultative council of the national conference would be available to advise the government on such issues.

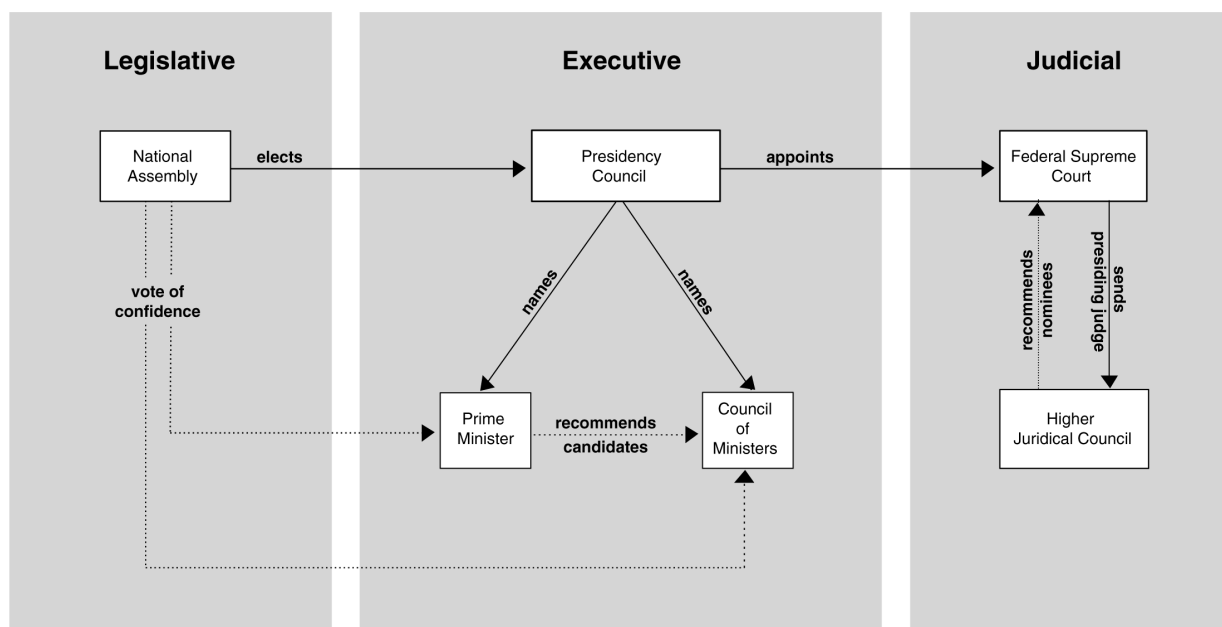
### **Transitional Government during Second Phase**

The second phase will begin after elections for a National Assembly are held and the transitional government is in place. Elections are to be held no later than January 31, 2005. The transitional government will consist of separate and independent legislative, executive, and judicial authorities (see fig. 2). According to the transitional law, once elected and assembled, the National Assembly will elect the Presidency Council, which will then name a prime minister. The prime minister will recommend candidates for the Council of Ministers, which the Presidency Council will name. Both the prime minister and Council of Ministers will be subject to a vote of confidence by the National Assembly. The Presidency Council will also appoint judges to the Federal Supreme Court from candidates that the Higher Juridical Council nominates.

---

<sup>4</sup>In testimony before the House Armed Services Committee on April 21, 2004, and before the Senate Foreign Relations Committee on April 22, 2004, Under Secretary Marc Grossman of the Department of State noted that one of the Administration's criteria for the interim government is that it not have a law-making body.

**Figure 2: Formation of the Iraqi Transitional Government**



Source: GAO analysis of the Law of Administration of Iraq for the Transitional Period, March 8, 2004.

The National Assembly will perform legislative and oversight functions. Composed of 275 members, it will develop its own internal procedures and sit in public sessions. It will examine bills proposed by the Council of Ministers, propose its own bills, ratify international treaties, and exercise oversight over the work of the executive authority.

A key function of the National Assembly is to write a draft permanent constitution by August 15, 2005.<sup>5</sup> The Iraqi people will then vote to approve the constitution in a general referendum to be held by October 15, 2005. If the permanent constitution is approved in the referendum, elections for a permanent government would take place no later than December 15, 2005, and the permanent government would take office no later than December 31, 2005. However, if a majority of Iraqi voters do not approve the draft constitution or if two-thirds of the voters in three or more governorates reject it, then the National Assembly will be dissolved. Elections for a new National Assembly would take place by December 15, 2005. The new government would continue to operate under the transitional law and be responsible for writing another draft permanent constitution.

The executive authority of the transitional government will consist of the Presidency Council, prime minister, and Council of Ministers. The Presidency Council will consist of a president and two deputies. All decisions made by the Presidency Council must be unanimous. The Presidency Council may veto any legislation passed by the National Assembly, but the National Assembly may override a veto with a two-thirds majority vote. The prime minister will be responsible for the day-to-

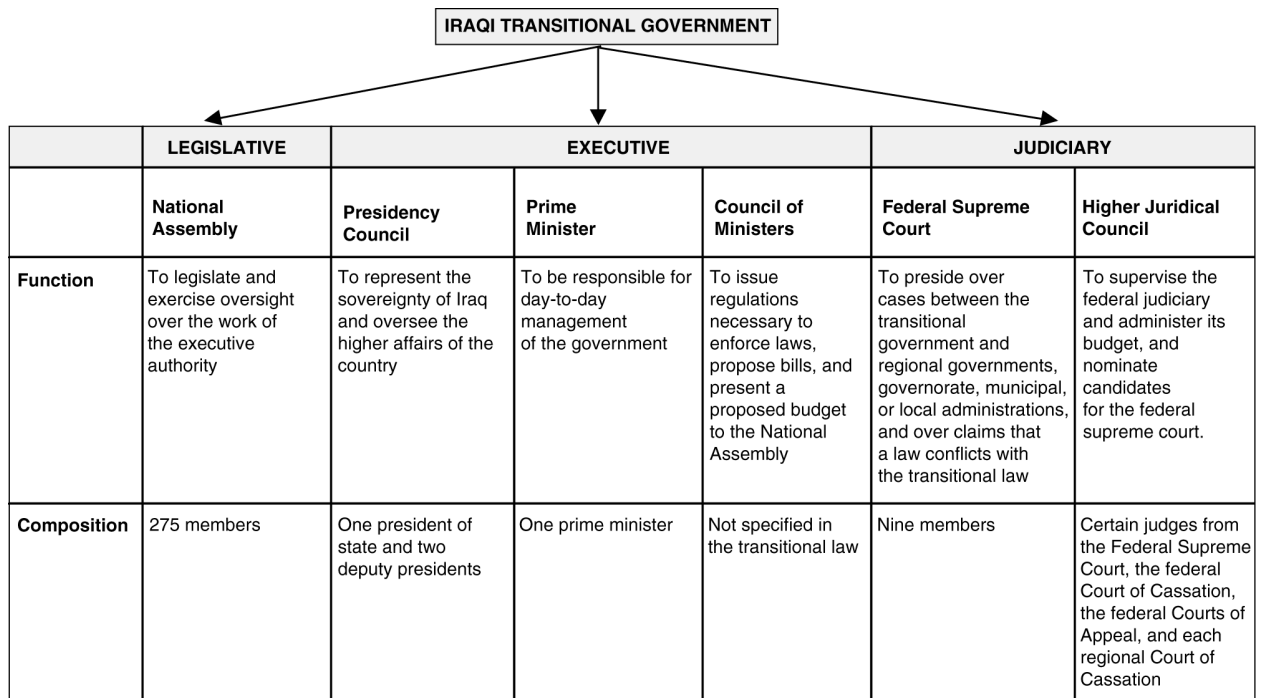
<sup>5</sup>If the National Assembly cannot meet this deadline, the President of the National Assembly may certify the need for additional time to write a draft constitution to the Presidency Council, but must do so no later than Aug. 1, 2005. The Presidency Council may extend the deadline by 6 months but may not extend the deadline again.



day management of the government. The Council of Ministers will draw up rules of procedure for its work and issue regulations necessary to enforce the laws. It will also have the exclusive right to propose a national budget to the National Assembly.

The transitional law modifies the existing judiciary by establishing a Higher Juridical Council and Federal Supreme Court. The Higher Juridical Council will supervise the federal judiciary and administer its budget, nominate judges for the Federal Supreme Court, and appoint judges to the federal courts. The Higher Juridical Council will be composed of judges from the Federal Supreme Court, the federal Court of Cassation, the federal Court of Appeal, and each regional Court of Cassation.<sup>6</sup> The nine-member Federal Supreme Court will have jurisdiction over legal matters between the transitional government and the regional governments, governorate and municipal administrations, and local administrations. It will also have jurisdiction over complaints that a law is inconsistent with the transitional law.<sup>7</sup> Figure 3 illustrates the legislative, executive, and judicial structure laid out in the transitional law.

**Figure 3: Function and Composition of the Iraqi Transitional Government**



Source: GAO analysis of the Law of Administration of Iraq for the Transitional Period, March 8, 2004.

### Provisions for Regions and Governorates

According to the transitional law, the Iraq government will be a federal system designed to prevent concentration of power in the federal government and to encourage the exercise of local authority and participation in government affairs.

<sup>6</sup>According to the transitional law, the court of cassation is the court of last resort in Iraq except where the Federal Supreme Court has jurisdiction.

<sup>7</sup>The Federal Supreme Court's ordinary appellate jurisdiction will be defined under federal law.

The transitional law recognizes the Kurdistan Regional Government as the official government of the territories that were administered by that government on March 19, 2003. The Kurdistan Regional Government will continue to perform its current functions throughout the transitional period, except with regard to issues that the transitional law exclusively reserves for the federal government. Specifically, it retains control over the police forces and internal security and has the right to impose taxes and fees within the Kurdistan region.

The transitional law allows for the formation of other regions within Iraq. Except for Baghdad and Kirkuk, groups of two or three governorates can form regions. The law does not specify how these regions could be formed but allows the interim government to propose mechanisms for their formation. The National Assembly would consider the proposal for enactment into law. Before a region can be formed, the people of the relevant governorates must approve the proposal in a referendum.

Each of Iraq's 18 governorates has the power to name a governor and form municipal and local councils. Elections for governorate councils will take place at the same time as elections for the National Assembly (no later than January 31, 2005). Governorate councils will have the authority to impose taxes and fees, organize administration of the governorate, implement projects at the provincial level independently or with other organizations, and conduct other activities consistent with applicable laws. In addition, governorate councils will assist the federal government in coordinating federal ministry operations within their governorates, including reviewing annual ministry plans and budgets as they relate to activities in the governorate. The transitional law also encourages the federal government to devolve other functions to lower levels of government where appropriate.

### **Arrangements for the Multinational Force, Iraqi Security Forces, and Militias**

The transitional law includes some provisions for the framework under which Iraqi security forces and the multinational force will provide security in Iraq after the transfer of power on June 30, 2004. Officials from DOD, State, and CPA are examining what authorities in addition to the current U.N. Security Council resolution and CPA order may be necessary. The transitional law also outlines elements of the command and control structure for some Iraqi security forces and outlaws all militias except where provided by federal law. According to State and DOD officials, CPA is currently addressing issues related to these areas.

### **Mandate and Legal Status of the Multinational Force**

According to Article 59 of the transitional law, the multinational force will continue operating in Iraq pursuant to the provisions of U.N. Security Council Resolution 1511 and any subsequent resolutions. In this resolution, the U.N. Security Council determined that the provision of security and stability is essential to the completion of Iraq's political transition process. Toward that end, the resolution authorized a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including ensuring necessary conditions for implementing the political transition's timetable and

program. It also authorized the multinational force to provide security for the U.N. Assistance Mission for Iraq, the Governing Council for Iraq, other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure. In the resolution, the U.N. Security Council called for this mandate to expire upon the establishment of an internationally recognized, representative government of Iraq and the completion of the political process in Security Council Resolution 1511.<sup>8</sup> However, the Security Council expressed readiness to consider any need to continue the multinational force, taking into account the views of this new Iraqi government.

The transitional law does not specifically deal with legal immunities for the force during the transitional period. However, the transitional law states that CPA orders remain in force until rescinded or amended by legislation. According to CPA Order 17, the multinational force is subject to the exclusive jurisdiction of their parent states and are immune from Iraqi legal jurisdiction.<sup>9</sup> This immunity remains in effect for their acts or omissions that occur during the period of authority of CPA, which is due to expire on June 30, 2004.

Senior officials from DOD and State have stated that the transitional law, U.N. Security Council Resolution 1511 and any subsequent resolution, and CPA Order 17 will sufficiently address the legal status of the multinational force after the transfer of power on June 30, 2004. According to a senior State official, the United States is currently working on a new Security Council resolution on Iraq to support the June 30 transition. According to this official, this resolution, among other things, would address the continuing need for security to complete the political process and would further define the role of the multinational force after June 30. In addition, a DOD official told us that CPA Order 17 is being revised and may provide more detail on the status of the multinational force than the current version.<sup>10</sup> While CPA Order 17, the transitional law, and U.N. Security Council Resolution 1511 cover many important elements of the legal status of the multinational force, they do not explicitly address other key issues, such as the authority of the force to move its personnel, equipment, and supplies into and throughout the country after the transfer of power. Nonetheless, subsequent U.N. resolutions or other agreements could address these issues.

For the transitional government phase, Article 59 of the transitional law authorizes the government to conclude binding international agreements regarding the activities

---

<sup>8</sup>Security Council Resolution 1511 lays out a political process that includes the internationally recognized Iraqi government assuming the CPA's responsibilities, providing a timetable and program for drafting a new constitution and holding elections, and convening a constitutional conference.

<sup>9</sup>According to this order, in cases where coalition personnel commit an act in Iraq for which the parent state has no criminal sanctions, CPA may request that the parent state waive jurisdiction to try such acts under Iraqi law. In these cases, no legal process could begin without the written permission of the CPA Administrator.

<sup>10</sup>According to the Department of Defense's Joint Publication 1-02, a status of forces agreement defines the legal position of a visiting military force deployed in the territory of a friendly state. Such an agreement's provisions describe (1) how the authorities of a visiting force may control that force's members, and (2) the amenability of the force or its members to the local law or to the authority of local officials. Provisions pertaining to the status of visiting forces may be in a separate agreement or they may form a part of a more comprehensive agreement.

of the multinational force operating in Iraq. The transitional law further states that nothing in the law will affect the rights and obligation under these bilateral agreements, or U.N. Security Council Resolution 1511 and any subsequent U.N. resolution, which will govern the activities of the multinational force pending the entry into force of these agreements.

### Control and Command of Iraqi Security Institutions

The transitional law and related CPA orders discuss the relationship between some of the Iraqi security forces and the multinational force after the transfer of power, as shown in the following table.

**Table 1: Control of Iraqi Security Forces after June 30, 2004**

Ministry	Security Force	Mission	Force Level		Controlling Authority after June 30, 2004
			As of 5/05/04 <sup>a</sup>	Requirement	
Ministry of Defense	<b>Iraqi Armed Forces Regular army and other services<sup>b</sup></b>	Security forces that will be responsible for the defense of Iraqi territory when fully operational.	4,100	35,000	The Ministry of Defense shall exercise administrative control. Coalition Forces will have operational control. <sup>c</sup>
	<b>Iraqi Civil Defense Corps</b>	Security and emergency service agency that directly supports coalition operations to provide security and stability. Complements the police force, but designed to perform operations that exceed the capacity of the police.	29,100	41,500	The Ministry of Defense shall exercise administrative control. Coalition Forces will have operational control.
Ministry of the Interior	<b>Iraqi Police Service</b>	Primary law enforcement agency responsible for public safety, security, and order.	87,300	89,400	Not yet determined.
	<b>Department of Border Enforcement</b>	Monitors and controls the movement of persons and goods to, from, and across the borders of Iraq. Includes Iraqi Border Police charged with border and customs enforcement, as well as immigration duties.	15,900 <sup>d</sup>	20,400	Not yet determined.
	<b>Facilities Protection Service</b>	Guards who secure individual ministry and municipal facilities against vandalism and theft.	74,100	75,000	Not yet determined.

Sources: DOD, CPA.

<sup>a</sup>GAO has not performed data reliability testing on these figures.

<sup>b</sup>According to a CPA official, these forces include units of the Iraqi Army, Iraqi Naval Infantry (less than a battalion), Iraqi Army Aviation (a few helicopters and small transport planes), Iraqi Coastal Defense Force (about a half-dozen patrol boats), an Iraqi counterterrorism force, and associated headquarters.

<sup>c</sup>According to DOD's Joint Publication 1-02, "DOD Dictionary of Military and Associated Terms," administrative control is the direction or exercise of authority over subordinate organizations in respect to administration and support, including control of

resources and equipment, personnel management, unit logistics, individual and unit training, readiness, mobilization, and discipline. Operational control is the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission.

<sup>d</sup>Figure includes Border Police and Department of Border Enforcement staff.

As shown in the above table, the Ministry of Defense and the multinational force will both exercise some element of control over the Iraqi Armed Forces, which now includes the Iraqi Civil Defense Corps. According to Article 59 of the transitional law, the Iraqi Armed Forces will be a principal partner in the multinational force pursuant to the provisions of U.N. Security Council Resolution 1511 and any subsequent resolutions during the transitional period. Issued on March 21, 2004, CPA Order 67 provides more detail on this relationship. The order established the Ministry of Defense, placed the Iraqi Armed Forces under the administrative control of the Ministry of Defense, and stated that the Iraqi Civil Defense Corps will be transferred to the Iraqi Armed Forces by June 1, 2004. The order stated, that pursuant to the provisions of U.N. Security Council Resolution 1511, all trained elements of the Iraqi Armed Forces will at all times be under the operational control of the Commander of the multinational force for the purpose of conducting combined operations and providing other support in accordance with CPA orders. CPA Order 73 formally transferred the Iraqi Civil Defense Corps to the Ministry of Defense as a component of the Iraqi Armed Forces on April 22, 2004.

According to Article 39 of the transitional law, national command authority on military matters during the transitional government phase is to flow from the prime minister to the minister of Defense to the military chain of command of the Iraqi Armed Forces. The law does not define national command authority during the interim government phase, which begins on June 30, 2004. According to CPA Order 67, the Ministry of Defense will operate under the authority, direction, and control of the CPA Administrator until the transfer of full governance authority to the Iraqi interim government.

As of May 5, 2004, the CPA Administrator exercised control over the Iraqi Police, Border Police, and Facilities Protection Service through the Ministry of the Interior. The Facilities Protection Service differs somewhat from the other forces in that its personnel are regulated by the Ministry of the Interior, but are paid and operate under the immediate command of the individual Ministry employing them. DOD officials have told us that all of the Ministry of Interior forces listed in the above table will be under the control of the multinational force after June 30; however, this arrangement has not been explicitly stated in any legal documents published by DOD or CPA.

### Future of Iraqi Militias

Article 27 of the transitional law specifies that armed forces and militias not under the command structure of the Iraqi transitional government are prohibited, except as provided by federal law. The transitional law does not address the status of militias under the interim government or establish mechanisms to disband or integrate militias into Iraq's security forces. However, according to CPA officials, they are working with political and militia leaders to encourage members of the militias to play a role in security by enlisting in the Iraqi Armed Forces and Iraqi Civil Defense Corps. For example, CPA is negotiating with Kurdish leaders on the transition of

members of the Pesh Merga into national security structures, job placement, or retirement. State Department officials said that it would take time to address the transition of militias. Presently, four major militias and numerous smaller militias are operating in Iraq. Table 2 provides information about some of these militias.

**Table 2: Some Militias Present in Iraq**

Militia	Political Affiliation	Location in Iraq	Number
<b>KDP Pesh Merga</b>	Militia of the Kurdistan Democratic Party	Northern portion	31,000 active
<b>PUK Pesh Merga</b>	Militia of the Patriotic Union of Kurdistan	Northern portion	13,000 active
<b>Badr Brigades</b>	Militia of Supreme Council for Islamic Revolution in Iraq, a Shiite Islamic Fundamentalist group that has ties with Iran	Southern portion	8,000 active
<b>Mahdi's Army</b>	Followers of Muqtada al-Sadr, the radical Shiite leader	Central and southern portions	2,000-5,000 active

Source: CPA and Congressional Research Service Reports on Iraq.<sup>11</sup>

## **Mechanisms for Resolving Disputes Over Property Rights and Territory during the Transitional Government Phase**

The transitional law includes three provisions for the transitional government to implement related to resolving disputes over property rights and territory. These disputes resulted from the previous regime's practices in altering the demographic character and boundaries of certain regions and territories, including Kirkuk.<sup>12</sup> Article 58(A) outlines mechanisms for resolving disputes over property rights; Articles 58(B) and (C) discuss the possible mechanisms and timing for determining the status of disputed territories.

Article 58(A) of the transitional law calls for the Iraqi transitional government, particularly the Iraq Property Claims Commission<sup>13</sup> and other relevant bodies, to take measures to remedy the injustice caused by the previous regime's practices in altering the demographic character of certain regions by expelling or relocating people. For residents who were deported, expelled, or who emigrated, such measures include restoring to them their homes and property, or, where this is

<sup>11</sup>*Iraq: U.S. Regime Change Efforts and Post-War Governance*, August 29, 2003; *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance*, February 23, 2004, Congressional Research Service.

<sup>12</sup>According to the 2003 State Department Human Rights report, the previous regime had systematically forced the removal of ethnic minorities under its admitted policy of "Arabizing" arable land. Specifically, the regime "Arabized" certain Kurdish areas, such as the urban centers of Kirkuk and Mosul, through the forced movement of local residents from their homes and villages and their replacement by Arabs from outside the area. Moreover, non-Arab citizens—people with Kurdish, Turkmen, Chaldean, or Assyrian identity—were forced to either change their ethnicity on their identity documents and adopt Arabic names or be expelled to the Kurd-controlled northern provinces.

<sup>13</sup>CPA Regulation 8 delegated authority to the Iraq Governing Council to establish the Iraq Property Claims Commission for the purpose of collecting and resolving real property claims. The Iraq Property Claims Commission statute, effective January 15, 2004, establishes the Commission and outlines its structure, procedures, and general principals.

infeasible, providing just compensation within a reasonable time, in accordance with the Iraq Property Claims Commission statute and other laws. For those people who had been newly introduced to specific regions and territories, the transitional government will ensure such individuals may be resettled, compensated, or possibly receive new land near their residence in the governorate from which they came, in accordance with the Iraq Property Claims Commission statute. The provision also states that the transitional government will permit affected persons the right to determine their own national identity and ethnic affiliation free from coercion and duress.

Two other provisions, Articles 58(B) and (C), discuss the possible mechanism and timing for determining the status of disputed territories whose administrative boundaries the previous regime had altered for political ends. Article 58(B) establishes a process Iraqis will use to resolve these disputes before requesting assistance from the United Nations. The article calls for the Presidency Council of the Iraqi transitional government to recommend remedies to the National Assembly to rectify such situations in the permanent constitution. If the Council cannot unanimously agree on a set of recommendations, it will appoint a neutral arbitrator to examine the issue and make recommendations. If the council cannot agree unanimously on an arbitrator it will request the U.N. Secretary General to appoint a distinguished international person to be the arbitrator. Article 58(C) states that the permanent resolution of disputed territories, including Kirkuk, will be deferred until after these measures are completed, a fair and transparent census has been conducted, and the permanent constitution has been ratified. The provision also states that the permanent resolution will take into account the will of the people of those territories.

## **Summary**

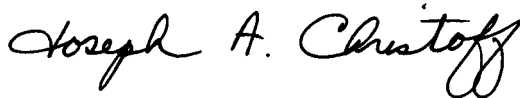
The transitional law provides a road map for establishing a permanent, unified, and democratic government in Iraq. Nonetheless, some issues related to the transfer of power remain unresolved. For example, the transitional law does not specify how the interim government is to be formed or structured, but states that the interim government will govern in accordance with an annex to be developed. Since April 2004, the United Nations has been playing a key role in helping to structure the interim government. However, to date, the interim government's specific authorities and responsibilities remain undefined. In addition, the electoral law for the National Assembly is to be completed before June 30, 2004, according to U.S. officials. Without an electoral law, the National Assembly cannot be formed. Finally, according to State Department and DOD officials, the transitional law and U.N. Security Council Resolution 1511 authorize the multinational force to operate in Iraq after June 30, and a new resolution may further define its role. However, the Secretary of State said in mid-May that if the Iraqi interim government asked the multinational force to leave, the force would leave. He did not expect this to happen. Although there are many difficult issues to be resolved, U.S. government and Iraq Governing Council officials, along with the United Nations, have only until June 30 to complete the work needed to ensure a smooth transition.

The transitional law contains some provisions addressing two of the key challenges facing the interim and transitional governments—maintaining a unified Iraq and

ensuring its security—but many issues remain open. The law recognizes the Kurdistan Regional Government and gives it control of territories in six governorates that it controlled before the war in Iraq. Since two-thirds of the voters in any three governorates can reject any draft constitution, Kurdistan or any three governorates could have significant influence on Iraq's political unity. The transitional law also recognizes the need to structure Iraq security forces as the country strives to form a unified permanent government, but does not fully detail how this will occur. For example, coalition and Iraqi officials are still working out the command and control structure of Iraqi security forces under the Ministry of the Interior. In addition, the transitional law does not establish mechanisms to disband or integrate militias into Iraq's security forces. If not resolved before June 30, the issue will be left to Iraq's interim or transitional government to address.

- - - - -

We are sending copies of this letter to interested congressional committees. The letter is also available on GAO's home page at <http://www.gao.gov>. If you or your staff have questions, please contact me at (202) 512-8979 or [christoffj@gao.gov](mailto:christoffj@gao.gov). Key contributors to this report included Tetsuo Miyabara, Judith McCloskey, Valérie Nowak, Mary Moutsos, Lynn Cothorn, Robert Ball, Julie Chao, David Hancock, and Stephanie Robinson.

A handwritten signature in black ink that reads "Joseph A. Christoff". The signature is written in a cursive style with a large, stylized "J" and "C".

Joseph A. Christoff  
Director  
International Affairs and Trade



---

---

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

---

## GAO's Mission

The General Accounting Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site ([www.gao.gov](http://www.gao.gov)) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to [www.gao.gov](http://www.gao.gov) and select "Subscribe to e-mail alerts" under the "Order GAO Products" heading.

---

## Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office  
441 G Street NW, Room LM  
Washington, D.C. 20548

To order by Phone:   Voice:   (202) 512-6000  
                              TDD:    (202) 512-2537  
                              Fax:     (202) 512-6061

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: [www.gao.gov/fraudnet/fraudnet.htm](http://www.gao.gov/fraudnet/fraudnet.htm)

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Public Affairs

Jeff Nelligan, Managing Director, [NelliganJ@gao.gov](mailto:NelliganJ@gao.gov) (202) 512-4800  
U.S. General Accounting Office, 441 G Street NW, Room 7149  
Washington, D.C. 20548